

#### D. Nondiscrimination Safeguards

64. We also seek comment on whether and the extent to which regulations are necessary to implement the nondiscrimination safeguards for electronic publishing set forth in section 274(d). That section states that a BOC "under common ownership or control with a separated affiliate or electronic publishing joint venture shall provide network access and interconnections for basic telephone service to electronic publishers at just and reasonable rates that are tariffed (so long as rates for such services are subject to regulation) and that are not higher on a per-unit basis than those charged for such services to any other electronic publisher or any separated affiliate engaged in electronic publishing."<sup>93</sup>

65. Prior to the 1996 Act, electronic publishing services were regulated as enhanced services and were subject to the nondiscrimination requirements established under our *Computer II*<sup>94</sup> and *Computer III* regimes.<sup>95</sup> Under *Computer III*, BOCs have been allowed to provide enhanced services on an integrated basis pursuant to approved CEI plans as well as rules regarding nondiscriminatory access to unbundled network elements, network information disclosure, limitations on use of CPNI, and nondiscrimination in quality of service, installation and maintenance. Moreover, under *Computer III* and *Open Network Architecture ("ONA")*,<sup>96</sup> BOCs have been required to provide at tariffed rates

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<sup>93</sup> 47 U.S.C. § 274(d).

<sup>94</sup> In *Computer II*, the Commission required AT&T, and, after divestiture, the BOCs, to provide enhanced services through separate subsidiaries. *Amendment of Section 64.702 of the Commission's Rules and Regulations ("Computer II")*, 77 FCC 2d 384 (1980) ("Final Order"), *recon.*, 84 FCC 2d 50 (1981) ("Further Reconsideration Order"), *aff'd sub nom. Computer and Communications Industry Ass'n v. FCC*, 693 F.2d 198 (D.C. Cir. 1982), *cert. denied*, 461 U.S. 938 (1983).

<sup>95</sup> *Amendment of Section 64.702 of the Commission's Rules and Regulations ("Computer III")*, CC Docket No. 85-229, *Phase I*, 104 FCC 2d 958 (1986) ("Phase I Order"), *recon.*, 2 FCC Rcd 3035 (1987) ("Phase I Reconsideration Order"), *further recon.*, 3 FCC Rcd 1135 (1988) ("Phase I Further Reconsideration Order"), *second further recon.*, 4 FCC Rcd 5927 (1989) ("Phase I Second Further Reconsideration Order"); *Phase II*, 2 FCC Rcd 3072 (1987) ("Computer III Phase II Order"), *recon.*, 3 FCC Rcd 1150 (1988) ("Phase II Reconsideration Order"), *further recon.*, 4 FCC Rcd 5927 (1989) ("Phase II Further Reconsideration Order"); *Computer III Remand Proceeding*, 5 FCC Rcd 7719 (1990) ("ONA Remand Order"), *recon.*, 7 FCC Rcd 909 (1992); *Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier 1 Local Exchange Company Safeguards*, 6 FCC Rcd 7571 (1991). In 1994, the Ninth Circuit Court of Appeals vacated in part the *Computer III* and ONA regulatory scheme and remanded the issues involved to the Commission. On remand, the Bureau concluded that BOCs must again provide enhanced services subject to CEI plans. See *supra* note 40. *Computer III* applies to BOC provision of enhanced services. We previously have not made a regulatory distinction between interLATA and intraLATA information services, as the 1996 Act now appears to do.

<sup>96</sup> See *Filing and Review of Open Network Architecture Plans*, 4 FCC Rcd 1 (1988) ("BOC ONA Order"), *recon.*, 5 FCC Rcd 3084 (1990) ("BOC ONA Reconsideration Order"); 5 FCC Rcd 3103 (1990) ("BOC ONA Amendment Order"), *erratum*, 5 FCC Rcd 4045, *pets. for review denied*, *California v. FCC*, 4 F.3d 1505 (9th Cir. 1993), *recon.*, 8 FCC Rcd 97 (1993) ("BOC ONA Amendment Reconsideration Order"); 6 FCC Rcd 7646 (1991) ("BOC ONA Further Amendment Order"); 8 FCC Rcd 2606 (1993) ("BOC ONA Second Further

nondiscriminatory interconnection to unbundled network elements used to provide enhanced services.<sup>97</sup> We conclude that these requirements continue to apply to the extent they are not inconsistent with the 1996 Act. We seek comment on whether the requirements of *Computer III* and *ONA* are consistent with the nondiscrimination requirements of section 274(d). To the extent that parties argue they are inconsistent, we seek comment on what regulations are necessary to implement section 274(d). Commenting parties should propose specific regulations and demonstrate in detail how section 274(d) makes them necessary.

66. Section 274(d) requires that a BOC under common ownership or control with a separated affiliate or electronic publishing joint venture must provide other electronic publishers "network access and interconnections for basic telephone service" at "just and reasonable rates that are tariffed" and that are not higher than the rates it charges to its own affiliates or other competing electronic publishers.<sup>98</sup> The term "basic telephone service" is defined in section 274(i)(2) as "any wireline telephone exchange service, or wireline telephone exchange service facility, provided by a [BOC] . . ." excluding competitive services introduced after divestiture and mobile services.<sup>99</sup> We interpret this section to require BOCs to provide unaffiliated electronic publishers with access to "any wireline telephone exchange service" and/or interconnection to any "wireline telephone exchange service facility" that it provides to its electronic publishing affiliate or joint venture. We seek comment on this interpretation. We tentatively conclude that the unbundling and network disclosure requirements of *Computer III* apply to this situation to the extent they are not inconsistent with the 1996 Act. We seek comment on whether those requirements are consistent with the requirements set forth in section 274(d).

67. We also seek comment on the meaning of the requirement that access and interconnection be provided to electronic publishers "at just and reasonable rates that are tariffed (so long as rates for such services are subject to regulation)."<sup>100</sup> We note that carriers currently are obligated under section 201(b) to provide communications services at "charges" that are "just and reasonable."<sup>101</sup> Section 274(d), in contrast, requires that rates

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*Amendment Order*"), *pet. for review denied*, *California v. FCC*, 4 F.3d 1505 (9th Cir. 1993) (collectively referred to as the *ONA Proceeding*).

<sup>97</sup> See *Computer III*, 104 FCC 2d 958.

<sup>98</sup> 47 U.S.C. § 274(d).

<sup>99</sup> 47 U.S.C. § 274(i)(2).

<sup>100</sup> 47 U.S.C. § 274(d).

<sup>101</sup> 47 U.S.C. § 201 (1994). Under section 201(a) of the 1934 Act, all common carriers, including BOCs, have a duty "to establish physical connections with other carriers," and to furnish "communications service upon reasonable request therefor." 47 U.S.C. § 201(a) (1996). Section 202(a) also makes it unlawful for any common carrier to discriminate in an unjust or unreasonable manner for "charges, practices, classifications, regulations, facilities, or services," or "to make or give any undue or unreasonable preference or advantage to

not be "higher on a per-unit basis than those charged for such services to any other electronic publisher."<sup>102</sup> We interpret this provision to require that BOCs offer necessary "basic telephone service" to all electronic publishers at uniform rates. Volume discounts or other preferential rates, therefore, would be unlawful because basic telephone services would be provided to some electronic publishers at higher per-unit rates than rates charged to other publishers. We seek comment on this tentative conclusion. We also seek comment on how we should interpret the requirement that "rates be tariffed (so long as rates for such services are subject to regulation)." We tentatively conclude that this section does not require BOCs to file tariffs for services that no longer are subject to tariff regulation. We seek comment on this tentative conclusion.

#### IV. ALARM MONITORING

68. Section 275(e) defines "alarm monitoring service" as "a service that uses a device located at a residence, place of business, or other fixed premises (1) to receive signals from other devices located at or about such premises regarding a possible threat at such premises to life, safety, or property, from burglary, fire, vandalism, bodily injury, or other emergency, and (2) to transmit a signal regarding such threat by means of transmission facilities of a [LEC] or one of its affiliates to a remote monitoring center to alert a person" of such threat.<sup>103</sup> Section 275(a) delays until February 8, 2001 entry into alarm monitoring by a BOC or its affiliate that was not providing this service as of November 30, 1995.<sup>104</sup>

69. We seek to define more clearly the services that are included in the definition of alarm monitoring. Alarm monitoring service as defined in section 275(e) appears to fall within the definition of "information service" in section 3(20) of the Act.<sup>105</sup> We also note that section 272(a)(2)(C) specifically exempts alarm monitoring service from the separate affiliate requirement applicable to other interLATA information services.<sup>106</sup> We tentatively conclude, therefore, that the provision of underlying basic tariffed telecommunications services alone, without an enhanced or information component, does not fall within the definition of alarm monitoring service under section 275(e). We note, for example, that Ameritech and US West both provide basic tariffed telecommunications services used for

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any particular person, [or] class of persons." 47 U.S.C. § 202(a) (1994). The 1996 Act did not change the general requirements of sections 201 and 202.

<sup>102</sup> 47 U.S.C. § 274(d).

<sup>103</sup> 47 U.S.C. § 275(e).

<sup>104</sup> 47 U.S.C. § 275(a).

<sup>105</sup> 47 U.S.C. § 153(20).

<sup>106</sup> 47 U.S.C. § 272(a)(2)(C).

alarm monitoring.<sup>107</sup> These tariffed services do not involve enhanced or information features and, therefore, do not appear to be subject to the 1996 Act requirements. We seek comment on this tentative conclusion.

70. Currently, it appears that only one BOC provides alarm monitoring service as an information service.<sup>108</sup> Ameritech provides an alarm monitoring service directly to end-user customers, including the sale, installation, monitoring and maintenance of monitoring and control systems for end-users. This service is provided on an integrated basis pursuant to a CEI plan on file.<sup>109</sup> We tentatively conclude that this service qualifies as an alarm monitoring service under section 275(e) and is therefore grandfathered under section 275(a)(2).<sup>110</sup> We seek comment on this tentative conclusion. We also seek comment on whether any other services provided by BOCs should be considered alarm monitoring services under section 275(e) and grandfathered under section 275(a)(2). For example, US West asserts that an enhanced service it provides called "Versanet" which is used by alarm monitoring companies to monitor residence and business locations for burglary, fire, or life safety events, is an alarm monitoring service under section 275(e).<sup>111</sup> US West provides this service on an integrated basis pursuant to a waiver of Commission rules.<sup>112</sup> We seek comment on whether this service constitutes an alarm monitoring service under section 275(e) and is grandfathered under section 275(a)(2).

71. We also seek comment on what types of activities constitute the "provision" of alarm monitoring services subject to the 1996 Act. Parties should address, with specificity, the levels and types of involvement in alarm monitoring that would rise to the level of "engag[ing] in the provision" of alarm monitoring. For example, we tentatively conclude that resale of an alarm monitoring service constitutes the provision of such service. We seek comment on this tentative conclusion. We also seek comment on whether, among other

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<sup>107</sup> See *BOC CEI Plan Approval Order*, 10 FCC Rcd at 13768-69 (describing Ameritech's "ScanAlert" service); See Letter from Elridge A. Stafford, Executive Director - Federal Regulatory, US West, to Rose Crellin, FCC, dated May 9, 1996 (describing US West's "Scan Alert Service") ("*First US West Letter*"). See also Letter from Dan L. Poole, Corporate Counsel, US West, to Lisa Sockett, FCC, dated May 16, 1996 (asserting that its "Scan Alert Service" should be categorized as an alarm monitoring service under section 275(a)) ("*Second US West Letter*").

<sup>108</sup> See *BOC CEI Plan Approval Order*, 10 FCC Rcd at 13770 (approving Ameritech's CEI plan for "SecurityLink" service).

<sup>109</sup> See *BOC CEI Plan Approval Order*, 10 FCC Rcd at 13770.

<sup>110</sup> 47 U.S.C. §§ 275(a)(2), (e).

<sup>111</sup> See *Second US West Letter* (discussing US West's "Versanet" service).

<sup>112</sup> See *Applied Spectrum Technologies, Inc., Memorandum Opinion and Order*, 58 RR 2d 881 (Com. Car. Bur. 1985); *The Mountain State Telephone and Telegraph Company, Memorandum Opinion and Order*, AAD 6-1104, 1986 WL 291403 (Com. Car. Bur. 1986), cited in *First US West Letter*.

things, billing and collection, sales agency, marketing, and/or various compensation arrangements, either individually or collectively, would constitute the provision of alarm monitoring. Parties should also address any other factors that may be relevant in determining whether an incumbent LEC, including a BOC, is providing an alarm monitoring service subject to the 1996 Act.<sup>113</sup>

72. Section 275(a)(2) prohibits a BOC already providing alarm monitoring service from "acquir[ing] any equity interest in, or obtain[ing] financial control of, any unaffiliated alarm monitoring service entity" prior to February 8, 2001. Specifically excepted from this prohibition, however, is an "exchange of customers for the customers of an unaffiliated alarm monitoring service entity."<sup>114</sup> We seek comment on whether there is a need to issue regulations to further define the terms of section 275(a)(2). For example, we seek comment specifically on what is meant by "equity interest" and "financial control" for the purpose of determining what types of transactions are prohibited under section 275(a)(2). We also seek comment on the conditions under which an "exchange of customers" would be consistent with the Act's purposes.

73. Under section 272 the provision of alarm monitoring service is specifically exempted from the separate affiliate and nondiscrimination requirements that would otherwise apply to the provision of interLATA information services.<sup>115</sup> We also note that, in contrast to section 272 which applies only to BOC provision of interLATA information services, section 275 does not distinguish between the intraLATA and interLATA provision of alarm monitoring.<sup>116</sup> We seek comment, therefore, on whether section 275 applies to BOC provision of both intraLATA and interLATA alarm monitoring services.

74. Section 275(b)(1) requires that an incumbent LEC<sup>117</sup> "provide nonaffiliated entities, upon reasonable request, with the network services it provides to its own alarm

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<sup>113</sup> We note that questions concerning the provision of alarm monitoring services have arisen in conjunction with Southwestern Bell Telephone Company's (SWBT) CEI Plan for Security Service, CC Docket Nos. 85-229, 90-623 and 95-20, filed Apr. 4, 1996. Pleading Cycle Established for Comments on SWBT's CEI Plan for Security Service, Public Notice, DA 96-645 (rel. Apr. 26, 1996).

<sup>114</sup> 47 U.S.C. § 275(a)(2).

<sup>115</sup> 47 U.S.C. § 272(a)(2)(C). We note that under § 271(g)(1)(D) the interLATA provision by a BOC or its affiliate of alarm monitoring services is included as an "incidental interLATA service." 47 U.S.C. § 271(g)(1)(D). As such, it is also exempt from the separate affiliate requirements of § 272. See 47 U.S.C. § 272(a)(2)(B)(i); see also *BOC In-Region NPRM* at ¶ 37.

<sup>116</sup> 47 U.S.C. § 275.

<sup>117</sup> An "incumbent LEC" is defined in section 251(h). See *supra* note 15. Although section 251(h) provides that this definition is for the purposes of section 251, we conclude that because section 275(b) refers specifically to section 251(h) for the purpose of defining an "incumbent [LEC] . . . engaged in the provision of alarm monitoring services," this definition applies for section 275(b) as well.

monitoring operations, on nondiscriminatory terms and conditions."<sup>118</sup> As discussed above, sections 201 and 202 of the Communications Act already place significant nondiscrimination obligations on common carriers.<sup>119</sup> In addition, alarm monitoring has been considered an enhanced service under the *Computer III* and *ONA* regime, so that the BOCs have been free to provide alarm monitoring services on an integrated basis pursuant to CEI plans filed with the Commission. We conclude that these *Computer III* nondiscrimination provisions continue to apply to the extent they are not inconsistent with the nondiscrimination requirements of section 275(b)(1).<sup>120</sup> We seek comment on whether the existing nondiscrimination and network unbundling rules in *Computer III* as they apply to BOC provision of alarm monitoring service are consistent with the requirements of section 275 and whether they should be applied to all incumbent LECs for the provision of alarm monitoring. To the extent that parties argue that the nondiscrimination provisions of *Computer III* and *ONA* are inconsistent or should not be applied, we seek comment on whether and what types of specific regulations are necessary to implement section 275(b)(1). Commenting parties should state specifically what rules, if any, are required and how section 275(b)(1) makes them necessary.

## V. TELEMESSAGING

75. Section 260 sets forth various requirements for the provision of telemessaging service by LECs subject to the requirements of section 251(c).<sup>121</sup> Our rules permit the BOCs to provide telemessaging on an integrated basis, subject to CEI and ONA requirements. Other LECs have been permitted to provide telemessaging subject only to the requirements of sections 201 and 202, which apply to all common carriers, including the BOCs. Like sections 274 and 275, section 260 does not distinguish between the intraLATA and interLATA provision of telemessaging.<sup>122</sup> We seek comment, therefore, on whether section 260 applies to BOC provision of telemessaging, both on an intraLATA and interLATA basis. In the *BOC In-Region NPRM*, we tentatively concluded that telemessaging is an information

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<sup>118</sup> 47 U.S.C. § 275(b). Section 275(b)(2) requires that an incumbent LEC "not subsidize its alarm monitoring operations either directly or indirectly from telephone exchange service operations." We requested comment on this provision in our *Accounting Safeguards NPRM*. *Accounting Safeguards NPRM* at ¶¶ 52-53. We also note that section 275(c) governs the expedited considerations of complaints by the Commission, as discussed *infra* at ¶ 81, and section 275(d) discusses the use of customer data, which is discussed in our *CPNI NPRM* at ¶ 47.

<sup>119</sup> See *supra* note 101.

<sup>120</sup> As noted above, currently these nondiscrimination requirements would only apply to BOCs that were providing alarm monitoring service as of Nov. 30, 1995. All other BOCs are precluded from providing this service until Feb. 8, 2001. See 47 U.S.C. § 275(a).

<sup>121</sup> See 47 U.S.C. § 260(a) (1996). Section 251(c) applies only to incumbent LECs as defined in section 251(h).

<sup>122</sup> 47 U.S.C. § 260.

service subject to section 272's separate affiliate and nondiscrimination requirements, and therefore, BOC provision of this service on an interLATA basis would be subject to the requirements of section 272 in addition to the requirements of section 260.<sup>123</sup> If we decide not to adopt that tentative conclusion, we seek comment on whether BOCs providing telemessaging services on either an inter- or intraLATA basis would be subject only to the requirements of section 260.

76. Section 260 defines "telemessaging service" as "voice mail and voice storage and retrieval services, any live operator services used to record, transcribe, or relay messages (other than telecommunications relay services), and any ancillary services offered in combination with these services."<sup>124</sup> We seek comment on whether rules are necessary to clarify any ambiguities that may exist in this definition. We also invite parties to address the types of services contemplated by the term "ancillary services," and to provide specific examples.

77. Section 260 also sets out specific nondiscrimination requirements applicable to LECs that are engaged in the provision of telemessaging.<sup>125</sup> Section 260(a)(2) provides that a LEC that provides telemessaging service "shall not prefer or discriminate in favor of its telemessaging service operations in its provision of telecommunications services."<sup>126</sup> We seek comment on the extent to which this section imposes greater obligations on LECs providing telemessaging service than currently exist under sections 201 and 202 of the Act. We conclude that the requirements of *Computer III* and *ONA* continue to apply to the extent not inconsistent with section 260. We seek comment on whether the nondiscrimination provisions of *Computer III* and *ONA* are consistent with section 260(a)(2), and whether these provisions should be applied just to BOCs or to all incumbent LECs to fulfill the requirements of section 260(a)(2). To the extent that parties argue that the nondiscrimination provisions of *Computer III* and *ONA* are inconsistent or should not be applied, we seek comment on whether and what types of specific regulations are necessary to implement section 260(a)(2). Commenting parties should state specifically what rules, if any, are required and how section 260(a)(2) makes them necessary.

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<sup>123</sup> *BOC In-Region NPRM* at ¶ 54.

<sup>124</sup> 47 U.S.C. § 260(c).

<sup>125</sup> Section 260(a)(1) also provides that any such LEC "shall not subsidize its telemessaging service directly or indirectly from its telephone exchange service or its exchange access." This provision is addressed in the *Accounting Safeguards NPRM*. See *Accounting Safeguards NPRM* at ¶¶ 29-33.

<sup>126</sup> 47 U.S.C. § 260(a).

## VI. ENFORCEMENT ISSUES

### A. Electronic Publishing -- Section 274(e)

78. Section 274(e) provides a private right of action to any person claiming that an act or practice of a BOC, affiliate, or separated affiliate has violated section 274.<sup>127</sup> Under section 274(e)(1), such person may file a complaint with the Commission or bring suit as provided in section 207.<sup>128</sup> Section 274(e)(1) also states that a BOC, affiliate, or separated affiliate shall be liable as provided in section 206,<sup>129</sup> except that damages may not be awarded for a violation "that is discovered by a compliance review" as required by section 274(b)(8)<sup>130</sup> and "corrected within 90 days."<sup>131</sup> In addition to damages, section 274(e)(2) permits an aggrieved person to apply to the Commission for a cease and desist order or to a U.S. District Court for an injunction or an order compelling compliance.<sup>132</sup>

79. Parties are invited to comment on the legal and evidentiary standards necessary to establish that a BOC has violated section 274. Commenters should describe what specific acts or omissions are sufficient to state a *prima facie* claim for relief under this section. Currently, in a typical complaint proceeding, the complainant generally has the burden of establishing that a common carrier has violated the Communications Act or a

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<sup>127</sup> See 47 U.S.C. § 274(e).

<sup>128</sup> 47 U.S.C. § 274(e)(1). Section 207 states that "[a]ny person claiming to be damaged by any common carrier subject to the provisions of this Act may either make complaint to the Commission as hereinafter provided for, or may bring suit for the recovery of the damages for which such common carrier may be liable under the provisions of this Act, in any district court of the United States of competent jurisdiction; but such person shall not have the right to pursue both such remedies." 47 U.S.C. § 207.

<sup>129</sup> Section 206 states that, "[i]n case any common carrier shall do, or cause or permit to be done, any act . . . prohibited or declared to be unlawful, or shall omit to do any act . . . in this Act required to be done, such common carrier shall be liable to the person or persons injured thereby for the full amount of damages sustained in consequence of any such violation . . . together with a reasonable attorney's fee, to be fixed by the court in every case of recovery . . . ." 47 U.S.C. § 206.

<sup>130</sup> This requirement is addressed in the *Accounting Safeguards NPRM*.

<sup>131</sup> 47 U.S.C. § 274(e)(1). As noted above, the Conference Committee adopted the House provisions relating to electronic publishing. Joint Explanatory Statement at 156. According to the House Report, the BOC, affiliate, or separated affiliate is liable for damages for any violation found, unless it is discovered first through the internal compliance review process and corrected within 90 days of such discovery. House Report at 86-7.

<sup>132</sup> 47 U.S.C. § 274(e)(2).



Commission rule or order.<sup>133</sup> Ordinarily,<sup>134</sup> this burden of proof does not, at any time in the proceeding, shift to the defendant carrier.<sup>135</sup> In the *BOC In-Region NPRM* we sought comment on whether, for purposes of complaints arising under section 271(d)(6)(B), shifting the ultimate burden of proof from the complainant to the defendant advances the pro-competitive goals of the 1996 Act.<sup>136</sup> We seek comment on whether there are similar policy concerns for doing this in the context of section 274 as well.

80. We also ask parties to comment specifically on what showing, if any, is required for the issuance of a cease and desist order under section 274. For example, would the evidentiary showing be different for a complainant seeking damages under section 274(e)(1) as opposed to one seeking a cease and desist order under 274(e)(2)? We also seek comment on what actions, if any, the Commission should take to deter violations of, and facilitate the prompt disposition of, complaints under section 274.

**B. Telemessaging and Alarm Monitoring -- Sections 260(b) and 275(c)**

81. Sections 260(b) and 275(c) require that the Commission establish expedited procedures for the receipt and review of complaints alleging violations of the nondiscrimination provisions in sections 260(a) and 275(b), or regulations adopted pursuant thereto, that result in "material financial harm" to a provider of alarm monitoring or telemessaging service, respectively.<sup>137</sup> Such procedures must "ensure that the Commission will make a final determination with respect to any such complaint within 120 days after receipt of the complaint."<sup>138</sup> In addition, these sections provide that if a complaint "contains an appropriate showing that the alleged violation occurred, as determined by the Commission in accordance with such regulations," the Commission must, within 60 days, order the

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<sup>133</sup> See generally, *Amendment of Rules Governing Procedures to be Followed When Formal Complaints Are Filed Against Common Carriers*, CC Docket No. 92-26, Report and Order, 8 FCC Rcd 2614 (1983); 47 C.F.R. §§ 1.721 - 1.735.

<sup>134</sup> In the case of section 202(a) complaints, however, once a complainant alleging a violation establishes that the services are like and that discrimination exists between them, the burden shifts to the defendant carrier to show that the discrimination is justified and, therefore, not unreasonable within the meaning of section 202(a). See, e.g., *MCI Telecommunications Corp v. FCC*, 917 F.2d 30, 39 (D.C. Cir. 1990).

<sup>135</sup> In any complaint proceeding initiated under Section 208 of the Communications Act, the Commission, and the staff pursuant to delegated authority, may exercise discretion to require a defendant carrier to come forward with information or evidence determined to be in the sole possession or control of the carrier. See, e.g., *General Services Administration v. AT&T*, 2 FCC Rcd 3574, 3576, n.31 (1987). In such cases, however, the burden of establishing a violation remains with the complainant.

<sup>136</sup> *BOC In-Region NPRM* at ¶ 102.

<sup>137</sup> 47 U.S.C. §§ 275(c), 260(b).

<sup>138</sup> *Id.*

incumbent LEC and its affiliates "to cease engaging in such violation pending such final determination." <sup>139</sup>

82. Apart from the expedited complaint procedures themselves, which will be addressed in a separate proceeding, we seek comment on the legal and evidentiary standards necessary to ensure a full and fair resolution of complaints filed under section 260 and 275 within the 120-day statutory window. Parties are invited to comment on what *prima facie* showing should be required of a complainant that invokes the 120-day complaint resolution requirement. Commenters should describe what specific acts or omissions are sufficient to state a *prima facie* claim for relief under section 260 and 275. As noted above, in the *BOC In-Region NPRM* we sought comment on whether, for purposes of complaints arising under section 271(d)(6)(B), shifting the ultimate burden of proof from the complainant to the defendant advances the pro-competitive goals of the 1996 Act.<sup>140</sup> We seek comment on whether there are similar policy concerns for doing this in the context of sections 260 and 275 as well.

83. Although parties filing complaints under section 208 are not required to show direct damage,<sup>141</sup> sections 260(b) and 275(c) require that complainants availing themselves of the expedited complaint procedures establish "material financial harm." We seek comment, therefore, on the meaning of "material financial harm" in these sections. Should there be a particular legal or evidentiary showing that the complaint must make in order to demonstrate material financial harm, or should the Commission decide the materiality of the harm on an individual case basis? If the complainant's pleadings allege a violation of the nondiscrimination requirements of sections 260 or 275, but do not demonstrate material financial harm, should the complainant still be entitled to an expedited review? We invite parties to comment on these issues.

84. In addition, we seek comment on what type of showing constitutes an "appropriate showing" for the Commission to issue the LEC an order "to cease engaging" in an alleged violation of sections 260 or 275. Would it be enough for the complainant to establish a *prima facie* showing of discrimination? We also seek comment on the meaning of an order "to cease engaging" under sections 260(b) and 275(c). Do these sections give the Commission authority to issue a cease and desist order similar to the one in section 274(e)(2)? If so, parties should comment on whether the showing under section 274 differs in any material respect from the showing required under sections 260 and 275. We also seek comment on what actions the Commission should take to deter violations of, and facilitate the prompt disposition of, complaints under sections 260 and 275.

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<sup>139</sup> *Id.*

<sup>140</sup> *See supra* at ¶ 79.

<sup>141</sup> Section 208(a) specifically provides that "[n]o complaint shall at any time be dismissed because of the absence of direct damage by the complainant." 47 U.S.C. § 208(a).

## VII. CONCLUSION

85. We seek comment on the foregoing issues regarding the implementation of the non-accounting separate affiliate and nondiscrimination requirements of sections 274, 275 and 260 of the 1996 Act. Any party disagreeing with our tentative conclusions should explain with specificity in terms of costs and benefits its position and suggest alternative regulatory policies.

## VIII. PROCEDURAL ISSUES

### A. *Ex Parte* Presentations

86. This is a non-restricted notice-and-comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in the Commission's rules. *See generally* 47 C.F.R. §§ 1.1202, 1.1203 and 1.1206.

### B. *Regulatory Flexibility Analysis*

87. Section 603 of the Regulatory Flexibility Act, as amended,<sup>142</sup> requires an initial regulatory flexibility analysis in notice and comment rulemaking proceedings, unless we certify that "the rule will not, if promulgated, have a significant economic impact on a significant number of small entities."<sup>143</sup> The Regulatory Flexibility Act generally defines the term "small entity" as having the same meaning as "small-business concern" under the Small Business Act,<sup>144</sup> which defines "small-business concern" as "one which is independently owned and operated and which is not dominant in its field of operation . . . ."<sup>145</sup> This proceeding pertains to the BOCs and other incumbent LECs which, because they are dominant in their field of operations, are by definition not small entities under the Regulatory Flexibility Act. We therefore certify, pursuant to section 605(b) of the Regulatory Flexibility Act, that the rules will not, if promulgated, have a significant economic impact on a substantial number of small entities. The Secretary shall send a copy of this *Notice*, including this certification and statement, to the Chief Counsel for Advocacy of the Small Business Administration.<sup>146</sup> A copy of this certification also will be published in the Federal Register notice.

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<sup>142</sup> 5 U.S.C. § 603.

<sup>143</sup> 5 U.S.C. § 605(b).

<sup>144</sup> 5 U.S.C. § 601(6), adopting 15 U.S.C. § 632(a)(1).

<sup>145</sup> 15 U.S.C. § 632(a)(1).

<sup>146</sup> 5 U.S.C. § 605(b).

C. *Initial Paperwork Reduction Act of 1995 Analysis*

88. This *NPRM* contains either a proposed or modified information collection. As part of its continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this *NPRM*, as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104-13. Public and agency comments are due at the same time as other comments on this *NPRM*; OMB comments are due 60 days from date of publication of this *NPRM* in the Federal Register. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

D. *Comment Filing Procedures*

89. Pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments on or before **September 4, 1996** and reply comments on or before **September 20, 1996**. To file formally in this proceeding, you must file an original and six copies of all comments, reply comments, and supporting comments. If you would like each Commissioner to receive a personal copy of your comments, you must file an original and eleven copies. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554, with a copy to Janice Myles of the Common Carrier Bureau, 1919 M Street, N.W., Room 544, Washington, D.C. 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 2100 M Street, N.W., Suite 140, Washington, D.C. 20037. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 1919 M Street, N.W., Room 239, Washington, D.C. 20554.

90. In order to facilitate review of comments and reply comments, both by parties and by Commission staff, we require that comments be no longer than thirty-five (35) printed pages and reply comments be no longer than twenty-five (25) printed pages. Page limits do not include proposed rules, which parties are encouraged to submit. Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments also must comply with section 1.49 and all other applicable sections of the Commission's rules.<sup>147</sup> We also direct all interested parties to

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<sup>147</sup> See 47 C.F.R. § 1.49. However, we require here that a summary be included with all comments and reply comments, regardless of length, although a summary that does not exceed three pages will not count toward the page limit for comments or reply comments. This summary may be paginated separately from the

include the name of the filing party and the date of the filing on each page of their comments and reply comments. Comments and reply comments must clearly identify the specific portion of this *Notice* to which a particular comment or set of comments is responsive. If a portion of a party's comments does not fall under a particular topic listed in the Table of Contents of this *Notice*, such comments must be included in a clearly labelled section at the beginning or end of the filing. Parties may not file more than a total of ten (10) pages of *ex parte* submissions, excluding cover letters. This 10 page limit does not include: (1) written *ex parte* filings made solely to disclose an oral *ex parte* contact; (2) written material submitted at the time of an oral presentation to Commission staff that provides a brief outline of the presentation; or (3) written materials filed in response to direct requests from Commission staff. *Ex parte* filings in excess of this limit will not be considered as part of the record in this proceeding.

91. Parties also are asked to submit comments and reply comments on diskette. Such diskette submissions would be in addition to and not in lieu of the formal filing requirements addressed above. Parties submitting diskettes should submit them to Janice Myles of the Common Carrier Bureau, 1919 M Street, N.W., Room 544, Washington, D.C. 20554. Such submission should be on a 3.5 inch diskette formatted in an IBM compatible form using MS DOS 5.0 and WordPerfect 5.1 software. The diskette should be submitted in "read only" mode. The diskette should be clearly labelled with the party's name, proceeding, type of pleading (comment or reply comments) and date of submission. The diskette should be accompanied by a cover letter.

92. Written comments by the public on the proposed and/or modified information collections are due on **September 4, 1996**. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before 60 days after date of publication in the Federal Register. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to [dconway@fcc.gov](mailto:dconway@fcc.gov) and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725 - 17th Street, N.W., Washington, DC 20503 or via the Internet to [fain\\_t@al.eop.gov](mailto:fain_t@al.eop.gov).

## **IX. ORDERING CLAUSES**


93. Accordingly, IT IS ORDERED that pursuant to sections 1, 4, 260, 274, 275, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 260, 274, 275, and 303(r), a NOTICE OF PROPOSED RULEMAKING is hereby ADOPTED.

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rest of the pleading (e.g., as "i, ii").

94. IT IS FURTHER ORDERED that, the Secretary shall send a copy of this NOTICE OF PROPOSED RULEMAKING, including the regulatory flexibility certification, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with paragraph 603(a) of the Regulatory Flexibility Act, 5 U.S.C. §§ 601 *et seq.* (1981).

FEDERAL COMMUNICATIONS COMMISSION

  
William F. Caton  
Acting Secretary

## APPENDIX

### SEC. 260. PROVISION OF TELEMESSAGING SERVICE.

(a) **NONDISCRIMINATION SAFEGUARDS.**--Any local exchange carrier subject to the requirements of section 251(c) that provides telemessaging service -- (1) shall not subsidize its telemessaging service directly or indirectly from its telephone exchange service or its exchange access; and (2) shall not prefer or discriminate in favor of its telemessaging service operations in its provision of telecommunications services.

(b) **EXPEDITED CONSIDERATION OF COMPLAINTS.**--The Commission shall establish procedures for the receipt and review of complaints concerning violations of subsection (a) or the regulations thereunder that result in material financial harm to a provider of telemessaging service. Such procedures shall ensure that the Commission will make a final determination with respect to any such complaint within 120 days after receipt of the complaint. If the complaint contains an appropriate showing that the alleged violation occurred, the Commission shall, within 60 days after receipt of the complaint, order the local exchange carrier and any affiliates to cease engaging in such violation pending such final determination.

(c) **DEFINITION.**--As used in this section, the term 'telemessaging service' means voice mail and voice storage and retrieval services, any live operator services used to record, transcribe, or relay messages (other than telecommunications relay services), and any ancillary services offered in combination with these services.

### SEC. 274. ELECTRONIC PUBLISHING BY BELL OPERATING COMPANIES.

(a) **LIMITATIONS.**--No Bell operating company or any affiliate may engage in the provision of electronic publishing that is disseminated by means of such Bell operating company's or any of its affiliates' basic telephone service, except that nothing in this section shall prohibit a separated affiliate or electronic publishing joint venture operated in accordance with this section from engaging in the provision of electronic publishing.

(b) **SEPARATED AFFILIATE OR ELECTRONIC PUBLISHING JOINT VENTURE REQUIREMENTS.**--A separated affiliate or electronic publishing joint venture shall be operated independently from the Bell operating company. Such separated affiliate or joint venture and the Bell operating company with which it is affiliated shall--

(1) maintain separate books, records, and accounts and prepare separate financial statements;

(2) not incur debt in a manner that would permit a creditor of the separated affiliate or joint venture upon default to have recourse to the assets of the Bell operating company;

(3) carry out transactions (A) in a manner consistent with such independence, (B) pursuant to written contracts or tariffs that are filed with the Commission and made publicly available, and (C) in a manner that is auditable in accordance with generally accepted auditing standards;

(4) value any assets that are transferred directly or indirectly from the Bell operating company to a separated affiliate or joint venture, and record any transactions by which such

assets are transferred, in accordance with such regulations as may be prescribed by the Commission or a State commission to prevent improper cross subsidies;

(5) between a separated affiliate and a Bell operating company-

(A) have no officers, directors, and employees in common after the effective date of this section; and

(B) own no property in common;

(6) not use for the marketing of any product or service of the separated affiliate or joint venture, the name, trademarks, or service marks of an existing Bell operating company except for names, trademarks, or service marks that are owned by the entity that owns or controls the Bell operating company;

(7) not permit the Bell operating company-

(A) to perform hiring or training of personnel on behalf of a separated affiliate;

(B) to perform the purchasing, installation, or maintenance of equipment on behalf of a separated affiliate, except for telephone service that it provides under tariff or contract subject to the provisions of this section; or

(C) to perform research and development on behalf of a separated affiliate;

(8) each have performed annually a compliance review-

(A) that is conducted by an independent entity for the purpose of determining compliance during the preceding calendar year with any provision of this section; and

(B) the results of which are maintained by the separated affiliate or joint venture and the Bell operating company for a period of 5 years subject to review by any lawful authority; and

(9) within 90 days of receiving a review described in paragraph (8), file a report of any exceptions and corrective action with the Commission and allow any person to inspect and copy such report subject to reasonable safeguards to protect any proprietary information contained in such report from being used for purposes other than to enforce or pursue remedies under this section.

(c) **JOINT MARKETING.**-

(1) **IN GENERAL.**-Except as provided in paragraph (2)-

(A) a Bell operating company shall not carry out any promotion, marketing, sales, or advertising for or in conjunction with a separated affiliate; and

(B) a Bell operating company shall not carry out any promotion, marketing, sales, or advertising for or in conjunction with an affiliate that is related to the provision of electronic publishing.

(2) **PERMISSIBLE JOINT ACTIVITIES.**-

(A) **JOINT TELEMARKETING.**-A Bell operating company may provide inbound telemarketing or referral services related to the provision of electronic publishing for a separated affiliate, electronic publishing joint venture, affiliate, or unaffiliated electronic publisher, provided that if such services are provided to a separated affiliate, electronic publishing joint venture or affiliate, such services shall be made available to all electronic publishers on request, on nondiscriminatory terms.

(B) **TEAMING ARRANGEMENTS.**-A Bell operating company may engage in nondiscriminatory teaming or business arrangements to engage in electronic publishing with any separated affiliate or with any other electronic publisher if (i) the Bell operating company



only provides facilities, services, and basic telephone service information as authorized by this section, and (ii) the Bell operating company does not own such teaming or business arrangement.

**(C) ELECTRONIC PUBLISHING JOINT VENTURES.**-A Bell operating company or affiliate may participate on a nonexclusive basis in electronic publishing joint ventures with entities that are not a Bell operating company, affiliate, or separated affiliate to provide electronic publishing services, if the Bell operating company or affiliate has not more than a 50 percent direct or indirect equity interest (or the equivalent thereof) or the right to more than 50 percent of the gross revenues under a revenue sharing or royalty agreement in any electronic publishing joint venture. Officers and employees of a Bell operating company or affiliate participating in an electronic publishing joint venture may not have more than 50 percent of the voting control over the electronic publishing joint venture. In the case of joint ventures with small, local electronic publishers, the Commission for good cause shown may authorize the Bell operating company or affiliate to have a larger equity interest, revenue share, or voting control but not to exceed 80 percent. A Bell operating company participating in an electronic publishing joint venture may provide promotion, marketing, sales, or advertising personnel and services to such joint venture.

**(d) BELL OPERATING COMPANY REQUIREMENT.**-A Bell operating company under common ownership or control with a separated affiliate or electronic publishing joint venture shall provide network access and interconnections for basic telephone service to electronic publishers at just and reasonable rates that are tariffed (so long as rates for such services are subject to regulation) and that are not higher on a per-unit basis than those charged for such services to any other electronic publisher or any separated affiliate engaged in electronic publishing.

**(e) PRIVATE RIGHT OF ACTION.**-

**(1) DAMAGES.**-Any person claiming that any act or practice of any Bell operating company, affiliate, or separated affiliate constitutes a violation of this section may file a complaint with the Commission or bring suit as provided in section 207 of this Act, and such Bell operating company, affiliate, or separated affiliate shall be liable as provided in section 206 of this Act; except that damages may not be awarded for a violation that is discovered by a compliance review as required by subsection (b)(7) of this section and corrected within 90 days.

**(2) CEASE AND DESIST ORDERS.**-In addition to the provisions of paragraph (1), any person claiming that any act or practice of any Bell operating company, affiliate, or separated affiliate constitutes a violation of this section may make application to the Commission for an order to cease and desist such violation or may make application in any district court of the United States of competent jurisdiction for an order enjoining such acts or practices or for an order compelling compliance with such requirement.

**(f) SEPARATED AFFILIATE REPORTING REQUIREMENT.**-Any separated affiliate under this section shall file with the Commission annual reports in a form substantially equivalent to the Form 10-K required by regulations of the Securities and Exchange Commission.

**(g) EFFECTIVE DATES.**-

(1) **TRANSITION.**-Any electronic publishing service being offered to the public by a Bell operating company or affiliate on the date of enactment of the Telecommunications Act of 1996 shall have one year from such date of enactment to comply with the requirements of this section.

(2) **SUNSET.**-The provisions of this section shall not apply to conduct occurring after 4 years after the date of enactment of the Telecommunications Act of 1996.

**(h) DEFINITION OF ELECTRONIC PUBLISHING.-**

(1) **IN GENERAL.**-The term 'electronic publishing' means the dissemination, provision, publication, or sale to an unaffiliated entity or person, of any one or more of the following: news (including sports); entertainment (other than interactive games); business, financial, legal, consumer, or credit materials; editorials, columns, or features; advertising; photos or images; archival or research material; legal notices or public records; scientific, educational, instructional, technical, professional, trade, or other literary materials; or other like or similar information.

(2) **EXCEPTIONS.**-The term 'electronic publishing' shall not include the following services:

(A) Information access, as that term is defined by the AT&T Consent Decree.

(B) The transmission of information as a common carrier.

(C) The transmission of information as part of a gateway to an information service that does not involve the generation or alteration of the content of information, including data transmission; address translation, protocol conversion, billing management, introductory information content, and navigational systems that enable users to access electronic publishing services, which do not affect the presentation of such electronic publishing services to users.

(D) Voice storage and retrieval services, including voice messaging and electronic mail services.

(E) Data processing or transaction processing services that do not involve the generation or alteration of the content of information.

(F) Electronic billing or advertising of a Bell operating company's regulated telecommunications services.

(G) Language translation or data format conversion.

(H) The provision of information necessary for the management, control, or operation of a telephone company telecommunications system.

(I) The provision of directory assistance that provides names, addresses, and telephone numbers and does not include advertising.

(J) Caller identification services.

(K) Repair and provisioning databases and credit card and billing validation for telephone company operations.

(L) 911-E and other emergency assistance databases.

(M) Any other network service of a type that is like or similar to these network services and that does not involve the generation or alteration of the content of information.

(N) Any upgrades to these network services that do not involve the generation or alteration of the content of information.

(O) Video programming or full motion video entertainment on demand.

**(i) ADDITIONAL DEFINITIONS.-As used in this section-**

(1) The term 'affiliate' means any entity that, directly or indirectly, owns or controls, is owned or controlled by, or is under common ownership or control with, a Bell operating company. Such term shall not include a separated affiliate.

(2) The term 'basic telephone service' means any wireline telephone exchange service, or wireline telephone exchange service facility, provided by a Bell operating company in a telephone exchange area, except that such term does not include-

(A) a competitive wireline telephone exchange service provided in a telephone exchange area where another entity provides a wireline telephone exchange service that was provided on January 1, 1984, or

(B) a commercial mobile service.

(3) The term 'basic telephone service information' means network and customer information of a Bell operating company and other information acquired by a Bell operating company as a result of its engaging in the provision of basic telephone service.

(4) The term 'control' has the meaning that it has in 17 C.F.R. 240.12b-2, the regulations promulgated by the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) or any successor provision to such section.

(5) The term 'electronic publishing joint venture' means a joint venture owned by a Bell operating company or affiliate that engages in the provision of electronic publishing which is disseminated by means of such Bell operating company's or any of its affiliates' basic telephone service.

(6) The term 'entity' means any organization, and includes corporations, partnerships, sole proprietorships, associations, and joint ventures.

(7) The term 'inbound telemarketing' means the marketing of property, goods, or services by telephone to a customer or potential customer who initiated the call.

(8) The term 'own' with respect to an entity means to have a direct or indirect equity interest (or the equivalent thereof) of more than 10 percent of an entity, or the right to more than 10 percent of the gross revenues of an entity under a revenue sharing or royalty agreement.

(9) The term 'separated affiliate' means a corporation under common ownership or control with a Bell operating company that does not own or control a Bell operating company and is not owned or controlled by a Bell operating company and that engages in the provision of electronic publishing which is disseminated by means of such Bell operating company's or any of its affiliates' basic telephone service.

(10) The term 'Bell operating company' has the meaning provided in section 3, except that such term includes any entity or corporation that is owned or controlled by such a company (as so defined) but does not include an electronic publishing joint venture owned by such an entity or corporation.

**SEC. 275. ALARM MONITORING SERVICES.**

**(a) DELAYED ENTRY INTO ALARM MONITORING.-**

(1) **PROHIBITION.**-No Bell operating company or affiliate thereof shall engage in the provision of alarm monitoring services before the date which is 5 years after the date of enactment of the Telecommunications Act of 1996.

(2) **EXISTING ACTIVITIES.**-Paragraph (1) does not prohibit or limit the provision, directly or through an affiliate, of alarm monitoring services by a Bell operating company that was engaged in providing alarm monitoring services as of November 30, 1995, directly or through an affiliate. Such Bell operating company or affiliate may not acquire any equity interest in, or obtain financial control of, any unaffiliated alarm monitoring service entity after November 30, 1995, and until 5 years after the date of enactment of the Telecommunications Act of 1996, except that this sentence shall not prohibit an exchange of customers for the customers of an unaffiliated alarm monitoring service entity.

(b) **NONDISCRIMINATION.**-An incumbent local exchange carrier (as defined in section 251(h)) engaged in the provision of alarm monitoring services shall-

(1) provide nonaffiliated entities, upon reasonable request, with the network services it provides to its own alarm monitoring operations, on nondiscriminatory terms and conditions; and

(2) not subsidize its alarm monitoring services either directly or indirectly from telephone exchange service operations.

(c) **EXPEDITED CONSIDERATION OF COMPLAINTS.**-The Commission shall establish procedures for the receipt and review of complaints concerning violations of subsection (b) or the regulations thereunder that result in material financial harm to a provider of alarm monitoring service. Such procedures shall ensure that the Commission will make a final determination with respect to any such complaint within 120 days after receipt of the complaint. If the complaint contains an appropriate showing that the alleged violation occurred, as determined by the Commission in accordance with such regulations, the Commission shall, within 60 days after receipt of the complaint, order the incumbent local exchange carrier (as defined in section 251(h)) and its affiliates to cease engaging in such violation pending such final determination.

(d) **USE OF DATA.**-A local exchange carrier may not record or use in any fashion the occurrence or contents of calls received by providers of alarm monitoring services for the purposes of marketing such services on behalf of such local exchange carrier, or any other entity. Any regulations necessary to enforce this subsection shall be issued initially within 6 months after the date of enactment of the Telecommunications Act of 1996.

(e) **DEFINITION OF ALARM MONITORING SERVICE.**-The term 'alarm monitoring service' means a service that uses a device located at a residence, place of business, or other fixed premises-

(1) to receive signals from other devices located at or about such premises regarding a possible threat at such premises to life, safety, or property, from burglary, fire, vandalism, bodily injury, or other emergency, and

(2) to transmit a signal regarding such threat by means of transmission facilities of a local exchange carrier or one of its affiliates to a remote monitoring center to alert a person at such center of the need to inform the customer or another person or police, fire, rescue, security, or public safety personnel of such threat, but does not include a service that uses a

medical monitoring device attached to an individual for the automatic surveillance of an ongoing medical condition.